

**CITY OF BEAVERTON
SUPPLEMENTAL STAFF REPORT # 4**

TO: Planning Commission

STAFF REPORT DATE: Wednesday, March 23, 2005

STAFF: Barbara Fryer, AICP, Senior Planner
Leigh Crabtree, Associate Planner

SUBJECT: TA 2004-0011
(Tree Code Text Amendments)

REQUEST: Amendments to Chapter 40, Chapter 60 and Chapter 90 of the Beaverton Development Code, currently effective through Ordinance 4332 (January 2005) to modify and clarify tree plan regulations.

APPLICANT: City of Beaverton
Planning Services Division
Barbara Fryer, AICP, Senior Planner
4755 SW Griffith Drive
Beaverton Oregon 97006

AUTHORIZATION: Ordinance 2050 (Development Code) effective through Ordinance 4332 (January 2005)

APPLICABLE CRITERIA: Ordinance 2050, effective through Ordinance 4332, Section 40.85.15.1.C.1-7 (Text Amendment Approval Criteria)

HEARING DATE: Wednesday, March 30, 2005

RECCOMENDATION: Staff recommends the Planning Commission choose option 1, 2 or 3 for Section 40.90.10.15 and **APPROVE** TA 2004-0011 (Tree Code Text Amendments), as attached as Exhibits 1, 2, and 3 of this Supplemental Staff Report as modified by the selection of Option 1, 2 or 3.

I. SUMMARY OF THE MARCH 16, 2005 PLANNING COMMISSION HEARING

- The Planning Commission expressed general support for option A for section 40.90.10.1 and 40.90.15.2.C. Staff made the appropriate change and only option A is shown in Exhibit 1 to this staff report.
- The Planning Commission expressed general support for the changes that staff made to the text, except the issue regarding Active Timber Production Lands.
- The subject of the March 30, 2005 Planning Commission hearing is the Active Timber Production Land issue.

II. ACTIVE TIMBER PRODUCTION LAND ISSUE

Considerable dialogue among the Planning Commissioners has occurred regarding active timber harvest and issues that have resulted from potential language in the Development Code. Staff consulted with the Oregon Department of Forestry (ODF) to clarify the roles of the City and ODF. Brad Knotts of ODF reviewed the draft code language that staff submitted in the last supplemental staff report (dated March 2, 2005). Mr. Knotts replied as follows:

“1. The proposed language in 40.90.15 (either option a or b) presents a problem. Either of the options apparently would exempt forestland in forest tax deferral status from the city ordinance, but at the same time prohibit clear cutting, as defined in the ordinance. Exempting parcels from local forest practice ordinances (and leaving them under the Forest Practices Act) based on tax deferral status is acceptable, although it does make it difficult for the Forestry Department, local government, and landowner to keep track of what applies where, especially as tax designations change for a property over time. However, as indicated in the publication *Guidelines for Developing Urban Forest Practices Ordinances* (see page 5) the intent of ORS 527.722 is that for a particular area, either the local government ordinance or the Forest Practices Act will have jurisdiction, but not both. The proposed language violates this principle by leaving parcels taxed as forestland under the Forest Practices Act, but then prohibiting one of the forest practices allowed under the act. Noted: The guideline publication mentioned above is available at <http://www.odf.state.or.us/pcf/Pub/ucf/UrbanFP.pdf>.

The issue is a little more clouded in that the proposed language parallels what is in the existing Washington County ordinance, to which a property outside the city but inside the UGB is currently subject (I am going on what I understood you to be saying – I didn’t have time to look up the county ordinance). I realize that the county ordinance has been around for some time, and objecting to it now creates some confusion. However, the Forestry

Department recommends that newer ordinances conform to current statutory requirements and interpretations.

2. ORS 527.722 requires local government forest practice regulations to protect soil, air, water, and fish and wildlife resources. No particular level of protection is specified, but it should be something that is reasonable for the natural resources and the city. At first glance, it appears that the ordinances provide adequate protection, but I didn't have time to consider them in depth. The city staff should review them to ensure that those resources will be protected."

The *Guidelines for Development Urban Forest Practices Ordinances* are attached as Exhibit 4. Mr. Knotts also sent the email to other forestry department personnel. The Protection Unit Forester for the Forest Grove District, Mitch Taylor, also sent comments. His comments are as follows:

"In light of your very quick turn-around time for review I have looked over the attached documents and can only offer my support for the issues that Brad has already raised. I, too, have concerns with the language in 40.90.10.15, either option.

It is very difficult for our field foresters to process notifications of operations that originate from the City of Tigard, for instance, which uses the same forestland deferral filter you are proposing. There is not yet a consistent way for us to get up to date information on the changes in deferral status, so our reference maps can be out of date at any time. This results in confusion for the regulating authorities, not to mention the landowners and their operators/contractors. It would be even more impractical for us to then have to make further clarification as to the type of harvest operation, down to the number of trees of a certain diameter, vigor and species mix to be left per acre, before we could determine whose jurisdiction it is. In the case where the harvest plan specifies leaving 50 ten inches trees per acre, ODF would have jurisdiction, but the city would have the responsibility to enforce the 50 trees per acre requirement., as well as to make an assessment of the health, diameter and species proportion requirements it proposes. My strong suspicion is that nearly all of these deferral pieces undergo a land use change and are taken off the deferral roles once the harvest is completed. Whether they fall under the FPA or the municipal ordinance for the harvest, they are most likely never going to see another commercial harvest of timber as the primary land use.

It is probably obvious that I have an opinion. I much prefer to see local jurisdictions develop ordinances for which it is easy to determine where they apply on a resource map and that the maps do not have the potential to

change in the short term. It is also quite clear that the limits of the FPA do not begin to serve the purposes of the protection of urban and community forests, as envisioned by Beaverton, Tigard and probably all other municipal jurisdictions. Trying to administer the FPA within UGB's and city limits is like pounding a square peg in a round hole.

I suggest looking for a cleaner break where cities can take an all or nothing approach. Decide what you want to protect, where and how to protect it and then write and administer your own ordinance. Get the FPA out of urban forestry.

I truly mean for this to be helpful. I hope it is.”

In light of the learned information of our colleagues at the Oregon Department of Forestry, staff proposes three options:

Option 1 (Exclusive ODF jurisdiction)

40.90.10.15 The harvesting of forest tree species for the commercial value of the timber on tax lots 1S132CD09100, 1S132CD09000, and 1S132CC11300 is exempt from the City's Tree Regulations and the Forest Practices Act applies.

Option 2 (Exclusive City jurisdiction, but verbatim County rules)

40.90.10.15 The harvesting of forest tree species for the commercial value of the timber on tax lots 1S132CD09100, 1S132CD09000, and 1S132CC11300 shall use a selective cutting procedure and clear cutting shall not be permitted. For the purposes of this exemption, clear-cut means any harvest unit that leaves fewer than fifty (50) living, healthy and upright trees per acre that are well-distributed over the unit and that measure at least eleven (11) inches in diameter at four (4) feet above grade. Species left should reflect the same species proportions existing prior to harvest.

Option 3 (Exclusive City jurisdiction, but modified description of County rules)

40.90.10.15 The harvesting of forest tree species for the commercial value of the timber on tax lots 1S132CD09100, 1S132CD09000, and 1S132CC11300 shall use a selective cutting procedure and clear cutting shall not be permitted. For the purposes of this exemption, clear-cut means any harvest unit that leaves fewer than fifty (50) living, healthy and upright trees per acre that are clustered or well-distributed over the unit and that measure at least ten (10) inches in diameter at four (4) feet above grade. Species left should reflect the same species proportions existing prior to harvest.

Analysis: All options would not change ODF authority to regulate “branding” or identification of forest products. Branding forest products and booming equipment

is required pursuant to ORS Chapter 532. This law requires every person who puts into any of the waters of the state, ships on any motor vehicle or railroad any forest products, or uses any booming equipment as a part of an operation in securing, rafting or floating forest products shall have a mark or brand previously selected by the person and registered with the State Forester or the Public Utilities Commission. Forest products branding is option east of the crest of the Cascade Mountains, if those forest products stay on the east side of the mountains.

Option 1 relegates all authority to regulate the referenced tax lots to the Oregon Department of Forestry. Option 1 would allow the owner to clear cut the property, pursuant to the Oregon Department of Forestry rules. If the property owner/timber operator does not reforest the property within 2 years of logging the property, then the ODF would cite the property owner/operator for not complying with the FPA. If the property owner came in for a land use change within that two year period, reforestation would no longer be required, but they would be subject to any city regulations at that time.

Option 2 is the exact language that currently applies to all properties in the urban unincorporated portion of Washington County under harvesting of forest tree species, with the caveat that the language only applies to the specified properties. This language is remarkably similar to ORS 527.620(9)(a) (ORS 527 is attached as Exhibit 5). ORS 527.620(9) applies moderate regulation on the harvest in that it requires “wildlife leave trees”, but does not require reforestation. The most stringent regulation requires reforestation and wildlife leave trees. ORS 527.620(9) allows three types of wildlife leave trees, depending on the forest classification. Of the three, the requirement for 50 11-inch DBH trees is found in ORS 527.620(9)(a). Option 3 includes the clustered or well-distributed statement desired by some members of the Planning Commission.

Options 2 and 3 would absolve the ODF from applying the FPA. In doing so, the City takes on the requirement to protect soil, air, water, and fish and wildlife resources. The City currently applies the Clean Water Services Design and Construction Standards to applications that could affect water resources. The City applies its erosion control standards found in the Municipal Code, which protects soil resources. Fish and wildlife habitat would be protected by requiring the same wildlife leave trees as ODF Harvest type 2 found in ORS 527.620(9)(a), although Option 3 would lower the DBH to 10-inches. In the case of options 2 and 3, if the timber operator wanted to exceed the 50 trees per acre threshold, they could proceed under the Tree Plan 3 application, but they would be subject to mitigation just as a development application.

Recommendation: Staff recommends the Planning Commission consider and choose one of three options for 40.90.10.15.

III. STAFF RECOMMENDATION

Staff recommends the Planning Commission:

- select option a, b or c for 40.90.10.15, and
- **APPROVE** TA 2004-0011 (Tree Code Text Amendments), as proposed in Exhibits 1, 2, and 3 of this Supplemental Staff Report, as modified by the Planning Commission's selections of one of three options for the aforementioned section within Exhibit 1.

IV. EXHIBITS

- Exhibit 1: Chapter 40 Modified Text, with options a, b and c for 40.90.10.15.
- Exhibit 2: Chapter 60 Modified Text
- Exhibit 3: Chapter 90 Modified Text
- Exhibit 4: Guidelines for Developing Urban Forest Practice Ordinances
- Exhibit 5: ORS Chapter 527

Exhibit 1
Proposed Amendments to Chapter 40, Section 90
(Tree Plan)
(File name on the web: Chapter 40 revision 4.pdf)

Exhibit 2

Proposed Amendments to Chapter 60, Section 60
(Trees and Vegetation)

(File name on the web: Chapter 60 revision 3.pdf)

Exhibit 3

Proposed Amendments to Chapter 90, Definitions
(File name on the web: Chapter 90 revision 3.pdf)

Exhibit 4
Guidelines for Developing Urban Forest Practice
Ordinances
(File name on the web: UrbanFP.pdf)

Exhibit 5
Oregon Revised Statutes Chapter 527
(File name on the web: ORS 527.pdf)